

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3446 of 1996

with

CIVIL APPLICATION No 4743 of 1996

WITH

SPECIAL CIVIL APPLICATION NOS 5206/95

AND

SPECIAL CIVIL APPLICATION No.4227/96

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? yes

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

+UJARAT PETROLEUM EMPLOYEES UNION

Versus

OIL & NATURAL GAS CORP.LTD.

Appearance:

1. Special Civil Application No. 3446 of 1996

MR P. UPADHYAY for Petitioner

SERVED BY RPAD for Respondent No. 1

MR RAJNI H MEHTA for Respondent No. 2

SERVED BY DS for Respondent No. 3,11,12

2. Civil ApplicationNo 4743 of 1996

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 27/08/96

ORAL (COMMON) JUDGEMENT

1. Rule. Mr.B.R.Shah for Mr.R.R.Tripathi appears and waives service for respondent No 1. Mr.Rajni Mehta appears and waives service of rule on behalf of respondent No.2. Rest of the respondents served. With the consent of parties matter is heard and finally decided today.

2. In this group of petitions filed under Article 226 of the Constitution of India Gujarat Petroleum Employees' Union for and on behalf of its members has raised certain interesting questions of law both in respect of the jurisdiction of this court under Article 226 of the Constitution of India and secondly as regards just and proper order which could be passed by the court of law in a fact situation which is obtaining and which is existing as on date.

3. The members of the petitioner-Union according to them are working as Khalasis, drivers, peons, clerks, sweepers, attendants, technical assistants, technicians, Chemists,xerox machine operators etc with the ONGC since last number of years. It is their further case that they have called upon the appropriate Government to abolish the contract labour system under Contract Labour (Regulation & Abolition) Act, 1970 by exercising its powers and issuing notification in that behalf under section 10 of the said Act. It is their further grievance that despite number of representations made by them to the authority it has till date not abolished the contract labour system in respondent-Corporation by issuing appropriate notification. With the result, that though they are entitled to continuity of service and other benefits which are available to regular employees are being denied to them as they are treated as workers employed by labour contractors. Thirdly, their grievance is that despite their raising dispute, the Conciliation Officer before whom the proceedings are pending is not deciding the dispute nor is he submitting his report with the result that they apprehended that their services would be terminated either by fresh labour contractor or by the ONGC and hence they have rushed to this court.

4. The Ld. single judge of this court, initially, entertained all the three petitions and granted ad-interim relief to continue the old contractors and in turn the old contractors are also directed not to terminate the services of the workmen and to continue to employ them on the terms and conditions on which they were being employed. The labour contractors who have continued as such under the orders of this court are joined as party respondents and these petitions have now come before this court for appropriate order.

6. There is no dispute that at present matter is pending before the Conciliation Officer and the Assistant Labour Commissioner for the reasons best known to him is delaying the disposal of said proceedings. According to Mr. T. R. Mishra, regular meetings or proceedings for conciliation are not held since 8/95 and therefore appropriate directions are required to be issued to the Conciliation Officer to complete and finish or conclude the conciliation proceedings either by recording settlements between the parties if possible or to submit the failure report or to pass any order which he can pass in exercise of his power. In reply to such statement of Mr. Mishra, Mr. B. R. Shah, Ld. Senior Counsel appearing for the ONGC and Mr. R. H. Mehta appearing for the Corporation in another matter have very fairly submitted that the conciliation proceedings must be concluded one way or other and prolongation thereof is not desirable for either party.

7. It is in the aforesaid circumstances that it becomes the duty of this court to direct the Assistant Labour Commissioner (Central) working as Conciliation Officer to conclude and submit his report of outcome of conciliation proceedings within six weeks from today to the appropriate authority. In view of the provisions of section 33 of Industrial Disputes Act, 1947 there is an obligation to see that during the pendency of conciliation proceedings before a Conciliation Officer in respect of industrial dispute no employer shall in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings, save the express permission in writing of the authority before which the proceeding is pending. In my opinion, this provision fully protects and casts obligation on the court of law also to protect the workmen who have raised dispute and when dispute is pending before the Conciliation Officer against any order that may be passed against workmen. Since large number of workmen are

employed under the aforesaid contract labour system referred to hereinabove, and since by way of ad-interim relief protection is already granted to such workmen by the Id.single judge of this court, in my opinion, it will be just and fair and quite consistent with the principles of grant of interim relief that the respondents are directed to maintain statusquo and not to disturb the services of the workmen till the conciliation proceedings are concluded and the report is submitted by the conciliation officer. This protection can also be extended in exceptional cases to a further period of a fortnight so as to provide some breathing time and protection to such workmen and therefore the ad-interim relief granted earlier by the learned single judge is confirmed and ordered to be continued till the final report is submitted by the Conciliation Officer to the appropriate Government and for a further period of a fortnight thereafter. There shall not be any interim relief from this court beyond that date.

8. Thirdly, Mr.Mishra for petitioner has submitted that even after failure report is submitted by the Conciliation Officer the appropriate Government mostly being the Central Government takes months and years to decide as to whether it should make reference of dispute or not. The lethargy that prevails in the Labour Ministry is very vividly described by him as a labour leader and against the entire system is also narrated by him. It is not possible for this court to attach much importance to such submission, but at the same time, thisw court can not turn its Nelson's Eye to the fact that wherever the Central Govt is the appropriate Government it consumes unreasonably long period in deciding as to whether reference of dispute should be made or not which at times results into untold hardships to the class of workmen. In the aforesaid facts and circumstances, it was also fairly agreed by the learned counsel appearing for the respondents that even the Central Government should be directed to take a decision on the report of the Conciliation Officer within reasonable time and in the facts of this case it is directed that the appropriate Government being the Central Government shall take decision on the report of the conciliation officer within 8 weeks after the receipt of the report. In case there is failure on the part of the appropriate Government to take decision it will be open to this court as well as to the petitioners to have recourse for contempt of court. Rule is made absolute accordingly to the aforesaid extent. No costs.

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